

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.17709 of 2006

Dated: 14-09-2006

Between:

Smt. G. Sunitha Kumari.

..... PETITIONER

AND

The Assistant Director of Mines and Geology, Nellore, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.17709 of 2006

ORDER:

One A. Radha Krishnaiah was granted mining lease for quarrying silica over an extent of Acs.25.00 in survey No.256, Yellapalem Village, Chillakur Mandal, Nellore District, for a period of twenty years. He died issueless. The petitioner claims to be the wife of nephew of Radha Krishnaiah. She alleges that Radha Krishnaiah died on 17.01.2005 and that while he was staying with them, he executed a registered Will dated 23.07.2004. In view of this, she made representation on 24.01.2005 to respondent No.1 requesting transfer of mining lease in her favour. The same was not considered. She then filed W.P.No.3737 of 2005 and this Court disposed of the same on 28.02.2005 directing respondent No.1 to consider her representation for transfer of mining lease. By letter dated 30.03.2005, respondent No.1 informed the petitioner and respondent No.3, who also sought transfer of mining lease, that they should resolve the dispute with regard to the genuineness of the documents produced by them claiming succession in appropriate Forum. The petitioner then filed O.S.No.169 of 2005 on the file of the Court of the Junior Civil Judge, Gudur, for permanent injunction against respondent No.3 and obtained *ad interim* injunction in I.A.No.706 of 2005 on 28.02.2006. Thereafter again respondent No.1 issued the impugned letter dated 22.06.2005 placing reliance on the legal advise and informed petitioner to resolve the dispute with regard to the genuineness of the document in appropriate forum and obtain succession certificate. Aggrieved by the same, the present writ petition is filed.

The learned counsel for the petitioner contends that when the original lessee dies, the competent authority can transfer the mining lease in favour of the legal heirs. Therefore, when the petitioner has claimed her right based on registered Will dated 23.07.2004, respondent No.1 ought to have accepted the same. He would further submits that Rule 37 of the Mineral Concession Rules, 1960, does not enable respondent No.1 to advise the person seeking transfer to obtain succession certificate from a competent civil Court.

There is no denial that respondent No.3 is also claiming right to seek transfer of mining lease based on a Will allegedly executed by late Radha Krishna. The petitioner also claims such right under Will dated 23.07.2004. In such a situation, respondent No.1 is not competent to decide which of the Wills is genuine and who succeeds to the rights of the deceased lessee. Therefore, it was reasonable for respondent No.1 to advise the contesting parties to approach civil Court seeking

appropriate succession certificate. This Court, therefore, does not find any infirmity in the impugned order dated 22.06.2005.

The writ petition is, therefore, dismissed. No costs.

(V.V.S.RAO, J)

14th September, 2006
ghn